U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TAMPA, FL Date: OCT 0 6 2008
relates)

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of the Dominican Republic, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen spouse and children, born in 1986, 1987 and 1993.

The acting district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director,* dated June 21, 2006.

On appeal, the applicant submits the following documentation: a letter from the applicant's fiancé, dated July 17, 2006; letters in support from two of the applicant's friends; an employment confirmation letter for the applicant, dated July 17, 2006; a letter and translation from the applicant's sister, dated July 17, 2006; a letter from the applicant's niece, dated July 18, 2006; a letter from the applicant's landlord, dated July 15, 2006; a letter from the applicant's estranged husband, dated July 18, 2006; a letter from a shelter for abused women on behalf of the applicant, dated March 7, 2002; and letters in recognition of the applicant from previous employers. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A)(i) of the Act provides, in pertinent part:

> [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of multiple crimes involving moral turpitude. In June 1998, the applicant entered a plea of nolo contendere to the offense of Grand Theft in the Third Degree, under section 812.014(1), Florida Statutes, based on a May 1997 arrest. The applicant was placed on probation for 18 months; no prison sentence was imposed. In addition, in March 2004, the applicant was convicted of Welfare Fraud under section 414.39, Florida Statutes, based on a July 2003 arrest. The applicant was placed on probation for two years; no prison sentence was imposed. As the aforementioned crimes were committed after the applicant's eighteenth birthday, the acting district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant is eligible to apply for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant, her fiancée and/or her extended relatives experience upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen spouse and child.

With respect to the consideration the AAO must give to the hardships the applicant's U.S. citizen spouse and children would encounter were the applicant removed from the United States under section 212(h) of the Act, the AAO first notes that the record indicates that the applicant and her U.S. citizen spouse are estranged. As such, it has not been established that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant's waiver request to be denied. As for the applicant's children, the record indicates that two of the children are over twenty-one years old. No documentation has been provided, such as statements from the applicant's adult children, to establish that they would suffer extreme hardship due to their mother's inadmissibility. As such, the AAO will focus its analysis of extreme hardship as it pertains to the applicant's youngest child, born in March 1993.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

The applicant contends that her youngest child will suffer extreme hardship if the applicant were removed. As stated by the applicant:

> I am the mother to three daughters. All of my children, [redacted], and [redacted] were born in the United States. My youngest daughter, [redacted] lives with me at our home in Tampa, Fl. She is an excellent student...she is in the seventh grade. I

> am the sole provider for my daughter, as she relies on me for shelter, food, and clothing....

Letter from [redacted], dated June 7, 2006.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No evidence has been provided with the appeal that establishes the applicant's financial situation, including income and expenses. The applicant has thus failed to show that her absence, and the subsequent loss of her income, will cause extreme financial hardship to the applicant's youngest child. In addition, the applicant does not establish that were she removed, she would be unable to obtain employment abroad and assist in supporting her youngest child. Moreover, it has not been established that the applicant's youngest child's father and/or older siblings would be unable to assist her financially and emotionally should the need arise. Finally, it has not been established that the applicant's youngest child would be unable to travel to the Dominican Republic to visit her mother on a regular basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While the applicant may need to make alternate arrangements with respect to her youngest child's care and upbringing, it has not been shown that such alternate arrangements would cause her youngest child extreme hardship.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant has not provided any documentation to establish that the applicant's youngest child would suffer extreme hardship were she to relocate abroad due to the applicant's inadmissibility. As previously referenced, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse and/or children would suffer extreme hardship if she were removed from the United States, and moreover, the applicant has failed to show that her U.S. citizen spouse and/or children would suffer extreme hardship were they to relocate to another country were the applicant removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.